

Message Text

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DRAFTED BY EB/IFD/OIA:RJSMITH

APPROVED BY EB/IFD/OIA:RJSMITH

LABOR:DAVERY

COMMERCE:DARRILL (SUBS)

TREASURY:EACLAPP (SUBS)

IO/LAB:APALMER

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E.O. 11652:N/A

TAGS: EINV, ILO, UN

SUBJECT: ILO DRAFTING GROUP ON TRANSNATIONAL CORPORATIONS

1. PARAGRAPH 3 CONTAINS GUIDANCE AGREED AMONG CONCERNED AGENCIES FOR USE OF USG REPRESENTATIVE TO SUBJECT DRAFTING GROUP. THIS IS NOT A FORMAL POSITION PAPER, AS WOULD HAVE BEEN PREPARED IF A U.S. DELEGATION WERE INVOLVED; HOWEVER, IT SHOULD PROVE USEFUL IN COURSE OF DRAFTING GROUP DELIBERATIONS.

2. AS INDICATED IN AGREED GUIDANCE, WE SEE ADVANTAGES IN A GENERALIZED FORM OF ILO INPUT INTO THE TRANSNATIONAL LIMITED OFFICIAL USE

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COMMISSION'S CODE CONSIDERATIONS. WHILE WE EXPECT SOME WRITTEN TRANSMISSION FROM ILO TO THE TRANSNATIONAL COMMISSION, A SPECIFIC TEXT RECOMMENDED FOR INCLUSION AS SUCH IN A U.N. CODE HAS THE POTENTIAL FOR CAUSING US DIFFICULTIES. THUS, OUR GOAL SHOULD BE TO HAVE ILO TRANSMIT ITS VIEWS TO BE TAKEN INTO ACCOUNT BY TNC COMMISSION, RATHER THAN DEFINITE LANGUAGE WHICH ILO WANTS

PUT IN CODE. AT THIS POINT WE ARE NOT CERTAIN WHAT DIRECTION U.N. EXERCISE WILL TAKE OR WHETHER GENERAL CODE, PER SE, WILL BE FINAL RESULT. FURTHER, THERE IS SOME RISK THAT OTHER U.N. BODIES WOULD TAKE CUE FROM ILO IN SEEKING TO DRAFT PROVISIONS IN THEIR AREAS OF CONCERN

FOR INSERTION INTO U.N. CODE, AND SUCH AN OPERATION WOULD SIGNIFICANTLY INCREASE POLITICAL MOMENTUM ON CODE, AT TIME WHEN BOTH WE AND SOME LDCS STILL WANT TO KEEP OPTIONS OPEN.

3. BEGIN GUIDANCE:

BACKGROUND

ON MAY 4-12, 1976, THE TRIPARTITE ADVISORY COMMITTEE MET AND RAN INTO AN EARLY IMPASSE OVER THE INSISTENCE OF THE WORKER REPRESENTATIVES TO WRITE A DETAILED MANDATORY CODE OF BEHAVIOR FOR MNES IN THE FIELD OF INDUSTRIAL RELATIONS AND SOCIAL POLICY AND THE EQUALLY STRONG EMPLOYER REPRESENTATIVES' INSISTENCE QUESTIONING THE NEED FOR SUCH A DOCUMENT, ESPECIALLY LEGALLY-BINDING CODE.

AS A COMPROMISE, THE U.S. REPRESENTATIVE, WHILE ALSO QUESTIONING THE NEED FOR A SEPARATE CODE, PROPOSED SETTING UP A SMALL TRIPARTITE DRAFTING GROUP WHICH WOULD PREPARE A GENERAL STATEMENT OF PRINCIPLES DEALING WITH EMPLOYMENT AND SOCIAL POLICY. THE U.S. STATED THAT SUCH A STATEMENT CONTAIN THE FOLLOWING PRINCIPLES WHICH LIMITED OFFICIAL USE

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WERE BASIC TO THE U.S., E.G., THAT THE STATEMENT BE (1) NONDISCRIMINATORY IN TERMS OF ITS EFFECTS ON INTERNATIONAL, DOMESTIC AND PUBLIC ENTERPRISES; (2) VOLUNTARY AND NOT LEGALLY BINDING; (3) IN CONSONANCE WITH RELEVANT NATIONAL AND INTERNATIONAL LAWS; AND (4) EVEN-HANDED IN TERMS OF ASSIGNING RESPONSIBILITIES TO ALL PARTIES INVOLVED--MNES, LABOR AND GOVERNMENTS.

WHEN COMPLETED THE STATEMENT WOULD BE CONSIDERED BY THE TRIPARTITE ADVISORY COMMITTEE IN APRIL 1977, AND IF FOUND ACCEPTABLE, WOULD BE FORWARDED TO THE ILO GOVERNING BODY WITH THE RECOMMENDATION THAT THE STATEMENT BE FORWARDED AT AN OFFICIAL, TECHNICAL LEVEL TO THE UN COMMISSION ON TRANSNATIONAL CORPORATIONS FOR INCLUSION IN ITS BROADER WORK ON GUIDELINES FOR MNES WHICH IS NOW GETTING UNDERWAY. THE FINAL DECISION ON THE DOCUMENT WOULD BE MADE BY THE ILO GOVERNING BODY WHICH COULD PROBABLY NOT CONSIDER IT BEFORE THE FALL OF 1977.

IN NOVEMBER 1976 THE ILO GOVERNING BODY DECIDED TO CONVENE A TRIPARTITE DRAFTING GROUP OF 12 REPRESENTATIVES- FOUR EACH FROM LABOR, EMPLOYERS AND GOVERNMENT--TO DRAFT A DECLARATION OF PRINCIPLES. THE TERMS OF REFERENCE FOR THE DRAFTING GROUP ESTABLISHED BY THE GOVERNING BODY WAS THAT THE DRAFT TEXT WAS TO DEAL WITH "ALL THE

AREAS OF CONCERN TO THE ILO RELATING TO ALL THE SOCIAL ASPECTS OF THE ACTIVITIES OF MULTINATIONAL ENTERPRISES, INCLUDING THE CREATION OF EMPLOYMENT IN DEVELOPING COUNTRIES, BEARING IN MIND THE RECOMMENDATIONS MADE BY THE TRIPARTITE ADVISORY MEETING HELD IN MAY 1976." THREE SEPARATE MEETINGS WERE SCHEDULED TO COMPLETE THIS TASK (JANUARY 10-14; MARCH 14-19; AND MARCH 28-APRIL 1, 1977).

THE MAY MEETING WAS SUCCESSFUL IN THAT IT DEFLECTED LABOR'S MOVE TO WRITE A SEPARATE MANDATORY CODE. IN LIMITED OFFICIAL USE

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ADDITION, THE U.S. WAS SUCCESSFUL IN INCORPORATING U.S. PRINCIPLES (NONDISCRIMINATION, VOLUNTARY NATURE OF EXERCISE, ADHERENCE TO INTERNATIONAL LAW AND RESPONSIBILITIES OF LABOR, EMPLOYEES AND GOVERNMENTS) INTO THE REPORT OF THE MEETING. FINALLY, THE U.S. WAS SUCCESSFUL IN TYING THE ILO EXERCISE INTO THE UN EXERCISE AND AVOIDING PROLIFERATION OF CODE-WRITING EXERCISES IN OTHER INTERNATIONAL BODIES.

U.S. POSITION

WHILE NOT TOO MUCH DETAILED DRAFTING MAY TAKE PLACE AT THIS INITIAL MEETING, IT IS EXPECTED THAT BASIC DISAGREEMENTS OVER THE TYPE OF DOCUMENT TO PREPARE WILL AGAIN SURFACE BETWEEN THE WORKER AND EMPLOYER REPRESENTATIVES AND PERHAPS SOME GOVERNMENTAL REPRESENTATIVES (E.G., MEXICO). THE U.S. DELEGATE SHOULD SEEK TO ENSURE

THAT THE FOLLOWING IMPORTANT ELEMENTS ARE A PART OF THE EXERCISE AND MAKE APPROPRIATE RESERVATIONS IF THESE POINTS ARE NOT FOLLOWED:

1. ALL PARTIES SHOULD ADHERE TO THE COMPROMISE AGREEMENT NEGOTIATED AT THE MAY MEETING AS TO THE NATURE AND TERMS OF THE DOCUMENT.
2. THE TEXT OF THE PROPOSED ILO STATEMENT OF PRINCIPLES MUST NOT GO BEYOND WHAT WE AGREED TO IN THE OECD GUIDELINES. IT IS ESPECIALLY IMPORTANT THAT NOTHING BE AGREED UPON WHICH CONTRADICTS OR JEOPARDIZES THE INTEGRITY OF THE OECD GUIDELINES IN THE FIELD OF

EMPLOYMENT POLICY.

3. IT IS IMPORTANT THAT ANY ILO TEXT BE KEPT GENERAL
ENOUGH SO THAT IT CAN BE TAKEN INTO ACCOUNT WITH REGARD
TO ANY PROVISION ON SOCIAL POLICY WHICH MAY BE INCLUDED
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IN A FUTURE UN CODE NOW UNDER CONSIDERATION BY THE UN
COMMISSION ON TRANSNATIONAL CORPORATIONS.

4. ANY AGREED ILO TEXT MUST BE FULLY CONSISTENT WITH
U.S. PRINCIPLES AS TO THE NATURE OF ANY GUIDELINES I.E.,
THAT THE INSTRUMENT (A) BE VOLUNTARY IN NATURE;
(B) BE NONDISCRIMINATORY AS BETWEEN MNES, DOMESTIC ENTER-
PRISES AND PUBLIC ENTERPRISES; (C) PROVIDE FOR ADHERENCE
TO INTERNATIONAL LAW; AND (D) PROVIDE FOR RESPONSIBILI-
TIES OF EMPLOYERS AND GOVERNMENTS.

5. THE STATEMENT SHOULD NOT UNDERMINE THE LEGITIMATE
RIGHTS OF WORKERS AND THE PRINCIPLES ESTABLISHED BY
EXISTING ILO LABOR STANDARDS. THE TEXT SHOULD AVOID
ANY EXPLICIT ENDORSEMENT OF WORKER PARTICIPATION IN
MANAGEMENT AND/OR TRANSNATIONAL BARGAINING.

6. ANY STATEMENT SHOULD BE CONSISTENT WITH U.S. LABOR
LAW AND PRACTICES. END GUIDANCE.
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Message Attributes

Automatic Decaptioning: X
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Disposition Approved on Date:
Disposition Case Number: n/a
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